

Applicant respectfully requests reconsideration of the rejection of Claims 1-49 as being based upon a defective reissue declaration under 35 USC § 251 for the following reasons:

MPEP 201.08 states that:

"A continuation-in-part is an application filed during the lifetime of an earlier nonprovisional application, repeating some substantial portion or all of the earlier nonprovisional application and *adding matter not disclosed* in the said earlier nonprovisional application. (Emphasis in original; citation omitted.)

RECEIVED

MAY 21 2001

TO 3600 MAIL ROOM

In Paperless Accounting, Inc. v. Bay Area Rapid Transmit System, 804 F.2d 659, 663, 231 USPQ 649, 652 (Fed. Cir. 1986), *cert. denied*, 480 U.S. 933 (1987), the Court noted the following policy considerations regarding continuation-in-part applications:

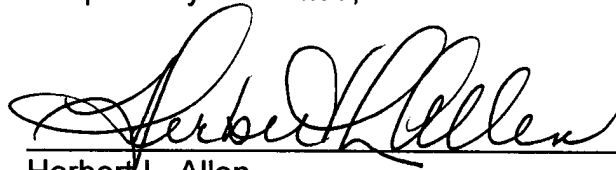
Law and policy liberally authorize the filing of c-i-p applications for a number of reasons, whether to enlarge the disclosure to include new technological information, thereby providing the public with knowledge of recent developments or improvements; or to enable more extensive prosecution or improved draftsmanship of specification or claims; or to provide a vehicle for prosecution of non-elected claims.

Applicant submits that there is clear continuity between the first filed design application and the later-filed utility application; this continuity is found in a comparison between the construction details shown in the design drawings with the tower construction shown in Figs. 1, 2, 6-8, and 10 of the utility application – the tower constructions shown in these drawings are essentially identical. Since inventorship has now been corrected to add the inventor of the design patent as a co-inventor of the utility patent, then the common inventive entity requirement for a continuation-in-part

application is also met. Applicant therefore respectfully requests that the Examiner withdraw the rejection under 35 USC § 251 and permit this application to pass to issue.

If the further prosecution of this application can be facilitated through a telephone interview between the Examiner and the undersigned, the Examiner is respectfully requested to telephone the undersigned at the Examiner's convenience.

Respectfully submitted,



Herbert L. Allen

Reg. No. 25,322

Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A.

255 S. Orange Avenue, Suite 1401

Post Office Box 3791

Orlando, Florida 32802

(407) 841-2330

Agent for Applicant

RECEIVED

MAY 21 2001

TO 3600 MAIL ROOM

### CERTIFICATE OF MAILING

I hereby certify that the foregoing is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner of Patents, Washington D.C. 20231, this 14<sup>TH</sup> day of May, 2001.



Edward Bradley